

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIO A. VALENZUELA,

Plaintiff,

v.

SANTIESTEBAN, *et al.*,

Defendants.

No. 1:20-cv-01093-NONE-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(Doc. No. 11)

Plaintiff Mario A. Valenzuela is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 20, 2020, the assigned magistrate judge screened plaintiff's complaint and found that plaintiff stated a cognizable claim against defendants Santiesteban, Rodriguez, and Alejo for excessive force in violation of the Eighth Amendment for the incident on June 22, 2019 and a cognizable claim against defendant Perez for failing to protect against the alleged excessive force by Santiesteban, Rodriguez, and Alejo for the incident on June 22, 2019 in violation of the Eighth Amendment, but failed to state any other cognizable claims or properly joined claims against any other defendants. The magistrate judge ordered plaintiff to either file a first amended complaint or notify the court of his willingness to proceed only on the cognizable claims. (Doc. No. 6.) On September 29, 2020, plaintiff notified the court of his willingness to proceed on the cognizable claims identified by the court. (Doc. No. 9.)

1 Accordingly, on October 1, 2020, the magistrate judge issued findings and
2 recommendations recommending that this action proceed on plaintiff's complaint against
3 defendants Santiesteban, Rodriguez, and Alejo for excessive force in violation of the Eighth
4 Amendment and defendant Perez for failure to protect in violation of the Eighth Amendment
5 arising from the incident on June 22, 2019. (Doc. No. 11.) The magistrate judge further
6 recommended that all other claims and defendants be dismissed from this action based on
7 plaintiff's failure to state claims upon which relief may be granted or failure to properly join
8 claims pursuant to Federal Rule of Civil Procedure 18. (*Id.*)

9 On October 13, 2020, plaintiff filed a notice of clarification. (Doc. No. 12.) Plaintiff's
10 notice states that although he notified the court of his willingness to proceed on the cognizable
11 claims regarding the June 22, 2019 incident, he would still like to file the improperly joined
12 claims individually on a later date. (*Id.*) This clarification does not require or even request any
13 adjustment to the conclusions set forth in the findings and recommendations.

14 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
15 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff's notice
16 of clarification, the court finds the findings and recommendations to be supported by the record
17 and by proper analysis.

18 Accordingly,

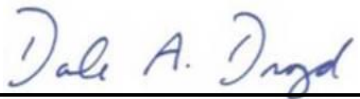
- 19 1. The findings and recommendations issued on October 1, 2020, (Doc. No. 11), are
20 adopted in full;
- 21 2. This action shall proceed on plaintiff's complaint, filed August 6, 2020, (Doc. No. 11),
22 against defendants Santiesteban, Rodriguez, and Alejo for excessive force in violation
23 of the Eighth Amendment and defendant Perez for failure to protect in violation of the
24 Eighth Amendment arising from the incident on June 22, 2019;
- 25 3. All other claims and defendants are dismissed from this action for failure to state
26 claims upon which relief may be granted or failure to properly join claims pursuant to
27 Federal Rule of Civil Procedure 18; and

28 /////

1 4. This action is referred back to the magistrate judge for proceedings consistent with this
2 order.

3
4 IT IS SO ORDERED.

5 Dated: October 21, 2020


UNITED STATES DISTRICT JUDGE